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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,660	07/16/2003	Patrick A. Engle	14138.01	9962

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EXAMINER

PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,660

Applicant(s)

ENGLE, PATRICK A.

Examiner

Gregory Pickett

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7,8,11-15 and 17-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 is/are allowed.
- 6) ☒ Claim(s) 7,8,11-14,17-20 and 22-24 is/are rejected.
- 7) ☒ Claim(s) 15,21 and 26-31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3728

DETAILED ACTION

1. This Office action acknowledges the applicant's Amendment submitted 13 December 2004. Claims 7, 8, 11-15, and 17-31 are pending in the application. Claims 1-6, 9, 10, and 16 have been canceled. Claims 21-31 are new.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Drawings

3. The cancellation of claim 3 renders moot the objection to the drawings. The objection is hereby withdrawn.

Specification

4. In light of the applicant's amendment, the objection to the specification is hereby withdrawn.

Claim Objections

5. In light of the applicant's amendment, the objection to claim 7 is hereby withdrawn.

6. Claims 26-31 are objected to because of the following minor informality: claim 26 appears to have a typographical error in line 12. In line 12, "sued" should be --used--.

Claims 27-31 are dependent on claim 26. Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris et al (US 2,554,680; previously provided to applicant) in view of Colby (US 978,358; previously provided to applicant).

Regarding claim 12, Morris et al discloses a storage and transport device (Figures 1-3) having a case body **1 & 2** of rigid material; an inner portion (see Figure 2) capable of holding the claimed articles; a set of clasps **31**, and an elongated gardening tool handle **32**. Morris lacks, or does not expressly disclose the gardening tool handle as the case handle.

Colby discloses a tool storage and transport device with clasps **35** and tool handle **38** attached to clasps **35** in such a way as to function as the case handle (see page 2, lines 126-130). It would have been obvious to one of ordinary skill in the art at the time the invention was made to relocate the handle and clasps of Morris et al in such an arrangement so as to function as a means for carrying the case as taught and suggested by Colby.

As to claim 11, Morris-Colby does not expressly disclose the claimed attachment means for the handle to the head.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use any known attachment means because applicant has not disclosed that the specific attachment means provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well with a threaded, locking pin, or frictional connecting means because they all perform the task of positive engagement of the handle with the tool head.

Therefore, it would have been an obvious matter of design choice to provide the device of Morris-Colby with the claimed locking pin attachment means to obtain the invention as specified in claim 11.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morris-Colby as applied to claim 12 above, and further in view of Parkhurst (US 1,094,009; previously provided to applicant) and Admitted Prior Art.

Morris-Colby discloses the claimed invention except that the clasps are a wrap-around band instead of loops of hook and loop fasteners. Parkhurst shows that buckles were an equivalent structure known in the art for clasping a handle to a receptacle. Applicant does not argue the Official Notice taken by the examiner, of the equivalents of buckles and hook and loop fastening loops for article retention, which the examiner interprets as an admission of prior art. Therefore, because these clasping means were art-recognized equivalents at the time the invention was made, one of ordinary skill in

Art Unit: 3728

the art would have found it obvious to substitute hook and loop fastening loops for the wrap-around bands of Morris and Colby.

9. Claims 8, 13, 14, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris-Colby as applied to claim 12 above, and further in view of Eatmon (US 6,439,630; previously provided to applicant).

Regarding claim 14, Morris et al. discloses the case in two portions. Colby discloses two clasps at the ends of the case. Morris-Colby discloses the claimed invention except for the case being two halves and the clasps extending outward from the edges of two case halves.

Eatmon discloses a case in two halves (see Figures 1 and 2). It would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to modify the shape of the case of Morris into two halves, since change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

As to the clasps, Eatmon shows that clasps **30 & 32** extending from the edge of a case portion were an equivalent clasp structure known in the art. Therefore, because these two clasping means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the two half tubular structures of Eaton for the wrap-around band of Colby and Morris.

Regarding claims 8 and 13, the device of Morris-Colby-Eatmon, as applied to claim 14 above, discloses the claimed invention.

Regarding claim 22, the device of Morris-Colby, as applied to claim 12 above, discloses the claimed invention except for the telescoping handle.

Eatmon discloses a telescoping handle **26**. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the handle of Morris-Colby as a telescopic handle in order to enable use of the tools while either standing or kneeling.

Regarding claim 24, the device of Morris-Colby, as applied to claim 12 above, discloses the claimed invention except for the inner resilient foam shaped to receive the tools.

Eatmon discloses inner resilient foam **14 & 16** shaped to receive the tools (see Col. 3, lines 1-3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the case of Morris-Colby with inner resilient foam as taught by Eatmon in order to prevent the tools from moving around during transport.

10. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris-Colby as applied to claim 12 above, and further in view of Bull (US 2,914,377; previously provided to applicant).

Morris-Colby discloses the claimed invention except for the porous, oil coated material.

Art Unit: 3728

Bull discloses impregnating (and thereby coating) of a porous material with oil to inhibit rust (see for example, Col. 2, lines 17-28). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Morris-Colby with a porous, oil coated material in order to inhibit rusting of the stored items.

11. Claim 23 rejected under 35 U.S.C. 103(a) as being unpatentable over Morris-Colby as applied to claim 12 above, and further in view of Wyss (US 5,738,214; previously provided to applicant).

The device of Morris-Colby, as applied to claim 12 above, discloses the claimed invention except for the inner molded plastic shaped to receive the tools.

Wyss discloses inner molded plastic **11** shaped to receive the tools (see Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the case of Morris-Colby with inner molded plastic as taught by Wyss in order to prevent the tools from moving around during transport.

Allowable Subject Matter

12. Claims 15 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Claim 25 is allowed.

14. Claims 26-31 would be allowable if amended to overcome the objection(s) set forth in this Office action.

15. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Arguments

16. Applicant's arguments with respect to claims 7, 8, 11-14, 17-20, and 22-4 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


Art Unit: 3728


extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Greg Pickett
Examiner
22 February 2005


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Group 3700